

**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**MARK JAMES TAYLOR
402 East Grant Street
Santa Maria, California 93454**

**Physical Therapist License No. PT 10464,

Respondent.**

Case No. 1D 2003 63317

OAH No. L2004060615

PROPOSED DECISION

This matter came on regularly for hearing on March 8, 2005, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Steven K. Hartzell (Complainant) was represented by E. A. Jones, III, Deputy Attorney General.

No appearance was made by or on behalf of Mark James Taylor (Respondent), despite his having been properly served with notice of the date, time and place of the hearing.

During the hearing, copies of California Highway Patrol Traffic Collision Report and Driving Under the Influence Arrest-Investigation Report in Case No. 08-02-43 (Complainant's Exhibit 5), and a copy of the Santa Maria Police Department Report in Case No. 2002R08148 (Complainant's Exhibit 6), were admitted as "administrative hearsay" pursuant to Government Code section 11513, subdivision (d). On his own motion, The Administrative Law Judge reconsiders those rulings and admits Exhibits 5 and 6 for all purposes pursuant to Evidence Code section 1280, subject to the limitations in *Lake v. Reed* (1997) 16 Cal.4th 448 [65 Cal.Rptr.2d 860].

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. Steven K. Hartzell made the Accusation in his official capacity as the Executive Officer of the Physical Therapy Board, Department of Consumer Affairs, State of California (Board).
2. On August 20, 1981, the Board issued Physical Therapist License No. PT 10464 to Respondent. The license was in full force and effect at all relevant times. It will expire on May 31, 2006, unless renewed.
3. Complainant established each of the allegations in paragraphs 8 through 17 of the Accusation. Those paragraphs are repeated verbatim below and are incorporated as factual findings herein.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

8. Respondent is subject to disciplinary action under [Business and Professions] Code section 2660 subdivision (d), in that he has been convicted of a crime substantially related to the qualifications, functions, and duties of a physical therapist in that he pled nolo contendere to one count of driving under the influence of alcohol. The circumstances are as follows:

9. On or about July 14, 2002, Respondent was involved in a traffic collision at the intersection [*sic*] Alvin and College in the city of Santa Maria. Several field sobriety tests (FST's) were administered upon Respondent by a Santa Maria Police Department Officer. Respondent failed the FST's.

10. After failing the FST's, Respondent was arrested and transported to the Santa Barbara County Jail – Santa Maria substation where he was given a breath test to determine his blood alcohol level. The breath test determined that Respondent's blood alcohol level was .17%.

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11. On or about August 8, 2002, in a criminal proceeding entitled *People of the State of California v. Mark James Taylor* in the Superior Court of California, County of Santa Barbara, case number 1082971, Respondent was convicted following a plea of no contest of driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. The Court sentenced Respondent to one day of county jail, three years of unsupervised probation, a restricted driver's license for 90 days, and various other fines.

SECOND CAUSE FOR DISCIPLINE

(Conviction of a Crime)

12. Respondent is subject to disciplinary action under [Business and Professions] Code section 2660, subdivision (d), in that he has been convicted of a crime substantially related to the qualifications, functions, and duties of a physical therapist in that he pled guilty to one count of driving under the influence of alcohol. The circumstances are as follows:

13. On or about August 19, 2002, Respondent was driving his vehicle northbound while traveling in the southbound lane of Bradley Road. Additionally, despite the fact that darkness had set in, Respondent was driving his vehicle without the benefit of headlights. Respondent had a collision with two vehicles while driving on Bradley Road. Respondent's vehicle came to a stop when it hit a telephone pole at approximately 25 miles per hour.

14. While investigating the incident, the California Highway Patrol officer detected the strong odor of alcohol coming from Respondent's vehicle. The officer then administered a series of FST's upon Respondent. Respondent failed the FST's. Respondent was then arrested and transported to the Santa Barbara [County] Sheriff's Office – Santa Maria substation where he was given two breath tests to determine his blood alcohol level. The breath tests determined that Respondent's blood alcohol level was .09% and .10%, respectively.

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15. On or about October 3, 2002, in a criminal proceeding entitled *People of the State of California v. Mark James Taylor* in the Superior Court of California, County of Santa Barbara, case number 1082643, Respondent was convicted following a plea of no contest of (1) driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor, and (2) driving while license suspended/revoked, in violation of Vehicle Code section 14601.5, subdivision (a). The Court sentenced Respondent to 60 days in county jail, three years unsupervised probation, a suspended driver's license for 2 years, and various other fines.

THIRD CAUSE FOR DISCIPLINE

(Use of Alcohol to an Extent Dangerous to the Public)

16. Respondent is subject to disciplinary action under [Business and Professions] Code section 2239, subdivision (a), and 2660, subdivision (i), in that he has used alcoholic beverages in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public or that he has sustained more than one misdemeanor conviction involving consumption of alcohol. The circumstances are as follows:

17. The facts and allegations in paragraphs 8 through 15, inclusive, are incorporated here by reference.

4. Respondent suffered two probation violations in connection with Case No. 1082643. Both violations involved Respondent consuming alcoholic beverages. The first violation occurred on the day he sold his home following a divorce. The second violation occurred the day he lost legal custody of his son in connection with the divorce.

5. Little evidence of mitigation, extenuation or rehabilitation was received. A brief Declaration by Respondent dated April 18, 2003, was admitted in evidence. In that Declaration, Respondent explained the circumstances underlying his two probation violations referenced in Paragraph 4, above. However, the Declaration does little to aid Respondent's cause. Although he was apparently suffering tremendous emotional upheaval at the time, the Declaration evidences two alcohol-related relapses while Respondent was on probation. A September 25, 2002 letter from a psychologist who was treating Respondent in a rehabilitation facility was also admitted, pursuant to Government Code section 11513, subdivision (d). As "administrative hearsay," the letter from the psychologist cannot, by itself, support a finding of rehabilitation. Even if it had been admitted for all purposes, it would be given little weight since the two alcohol-related probation violations occurred after the letter was written.

6. Pursuant to Business and Professions Code section 2661.5, Complainant's counsel requested that Respondent be ordered to pay to the Board \$8,057.75 for its costs of investigation and prosecution of the case. The costs consist of \$4,080.00 for investigative services, and \$3,977.75 in Attorney General's fees.

7. Of the sum requested for Attorney General's fees, \$695.00 represented a "good faith estimate" of five hours for further preparation time the Deputy Attorney General anticipated spending between the date of his Declaration and the date of the hearing. Business and Professions Code section 2661.5, subdivision (a) permits the awarding only of those costs which are **actual** and reasonable. Since the evidence failed to reveal whether the Deputy Attorney General actually spent an additional five hours investigating and/or preparing for the hearing, Complainant failed to prove that the costs related to those hours were actual. That \$695.00 is disallowed.

8. The request for Attorney General's fees reflects the work of four different Deputies Attorney General in the preparation of the case. Their work necessarily involved a certain amount of overlap in that each attorney was required to repeat certain tasks already performed by other(s) in order to continue working up the case and to prepare for the hearing. Pursuant to Business and Professions Code section 2661.5, subdivision (b), the reasonable amount of recoverable Attorney General's fees is \$1,641.38, or 50% of those fees claimed for the four attorneys collectively (exclusive of the \$695.00 already disallowed).

9. Complainant shall recover \$4,080.00 for the costs of investigation and \$1,641.38 in Attorney General's fees, for a total of \$5,721.38.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to revoke or suspend Respondent's license, pursuant to Business and Professions Code section 2660, subdivision (d), for conviction of a crime substantially related to the qualifications, functions and duties of a physical therapist, as set forth in Finding 3, subparagraphs 8 through 17, inclusive.

2. Cause exists to revoke or suspend Respondent's license, pursuant to Business and Professions Code sections 2239, subdivision (a), and 2660, subdivision (i), for using alcoholic beverages in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public or sustaining more than one misdemeanor conviction involving consumption of alcohol, as set forth in Finding 3, subparagraphs 8 through 17, inclusive.

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3. Cause exists to order Respondent to pay the costs claimed under Business and Professions Code section 2661.5, as set forth in Findings 6, 7, 8 and 9.

The substantial relationship between Respondent's alcohol use and his alcohol-related criminal convictions, to his qualifications, functions and duties as a physical therapist, are established by statute in Business and Professions Code section 2239, subdivision (a). That substantial relationship is supported by case law. (*In re Kelley* (1990) 52 Cal.3d 487; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.)

Insufficient evidence of mitigation, extenuation, or rehabilitation having been received, license revocation is deemed necessary in this case.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. License No. PT 10464, issued to Respondent, Mark James Taylor, is revoked.

2. Respondent is hereby ordered to reimburse the Board the amount of \$5,721.38 for its investigative and prosecution costs. Payment in full shall be made within 30 days from the effective date of this decision unless the Board agrees in writing to payment by an installment plan.

DATED: March 25, 2005

Original Signed By:

H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings

**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended)	Case #: 1D 2003 63317
Amended Against:)	
)	OAH No.: L2004060615
MARK JAMES TAYLOR.)	
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The foregoing Proposed Decision, in case number 1D 2000 62700, is hereby adopted by the Physical Therapy Board, Department of Consumer Affairs, State of California.

This decision shall become effective on the 16th day of May, 2005.

It is so ordered this April 14th, 2005 .

Original Signed By:
Donald A. Chu, P.T., President
Physical Therapy Board
of California